

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROCKWELL MINING LLC

Employer

and

Case 09-RC-202389

UNITED MINE WORKERS OF AMERICA
INTERNATIONAL UNION, AFL-CIO

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., June 21, 2018.

¹ In denying review, we do not rely on the Regional Director's citation to *The Permanente Medical Group, Inc.*, 358 NLRB 758 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

We agree with the denial of the Employer's request for review here. Member Pearce finds that even if all the conduct alleged as objectionable had taken place during the critical period, it would not have merited setting aside the election.

Members Kaplan and Emanuel note, however, that this case suggests there may be an important issue to be considered in a future case about whether the Board's critical period policy established in *Ideal Electric and Mfg. Co.*, 134 NLRB 1275 (1961), adequately protects employees from election interference by coercive threats, as opposed to mere campaign misrepresentations, made immediately prior to the filing of an election petition. This concern may be greater in light of the shortened critical periods resulting from the Board's 2014 election rule changes.

Member Pearce notes that the 2014 election rule changes did not affect the Board's ability to set aside an election when a party engages in "clearly proscribed prepetition activity likely to have a significant impact on the [Board] election." See *Royal Packaging Corp.*, 284 NLRB 317, 317 (1987); *Lyon's Restaurants*, 234 NLRB 178, 179 (1978).